

**United Hydraulic Services, Inc. and Perry Williams  
and James O. Mills. Cases 9-CA-17643, 9-  
CA-17692, and 9-CA-19166**

29 June 1984

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS**

On 8 August 1983 Administrative Law Judge Bruce C. Nasdor issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings,<sup>1</sup> findings,<sup>2</sup> and conclusions<sup>3</sup> and to adopt the recommended Order as modified.<sup>4</sup>

<sup>1</sup> The Respondent has excepted to the judge's admission of evidence concerning incidents occurring 2-3 months and 1 year after the incidents alleged in the complaint. Since the judge did not rely on this evidence in making his decision, we need not determine whether the judge was correct in admitting this evidence.

<sup>2</sup> In sec. II of his decision, the judge inadvertently stated that Williams' conduct on 27 December 1981, rather than on 21 December 1981, was clearly concerted and protected. We agree with the judge that the Respondent discharged Williams for his union activities, and find it unnecessary to pass on Williams' conduct on 21 December. See *Meyers Industries*, 268 NLRB 493 (1984). Member Dennis would affirm the judge's finding that Williams was engaging in protected concerted activity on 21 December when he distributed copies of the complaint to other employees and criticized the unlawful work rules. See *Ontario Knife Co. v. NLRB*, 637 F.2d 840 (2d Cir. 1980), cited with approval in *Meyers*.

We agree with the judge's conclusion that the Respondent violated Sec. 8(a)(1) and (3) of the Act by promulgating certain work rules in retaliation against the employees' efforts to engage in union and/or concerted protected activities. We therefore find it unnecessary to pass on the judge's conclusion that these work rules additionally were unlawful because they were overly restrictive.

We further note that the Respondent presented testimony, not mentioned by the judge, that a Board agent at some time during the investigation of the case told the Respondent to post "some" work rules. However, even accepting such testimony as true, we conclude that the Board agent's advice is not binding on the Board and does not preclude a finding that the Respondent violated the Act by promulgating the work rules.

We adopt the judge's conclusion that the Respondent violated Sec. 8(a)(1) and (3) of the Act by discharging Williams for pretextual reasons. In so doing, however, we do not rely on the judge's findings that the Respondent would not have terminated Williams "but for" his union and protected concerted activity. See generally *Wright Line*, 251 NLRB 1083 (1980), and *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

<sup>3</sup> In Conclusion of Law 4, the judge inadvertently stated that the Respondent violated Sec. 8(a)(1) of the Act by informing a "perspective" employee that other employees were laid off because of union activity, whereas the record reflects that the Respondent made such a statement to an employee who had been hired. Therefore, we amend Conclusion of Law 4 as follows:

4. By informing an employee that other employees were laid off because they attempted to bring the union into the shop, the Respondent engaged in conduct violative of Section 8(a)(1) of the Act.

<sup>4</sup> We shall modify the judge's recommended Order so as to provide that the Respondent cease and desist from discriminating in regard to the tenure of employment of the unlawfully laid-off and/or terminated employees.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, United Hydraulic Services, Inc., Micco, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(c).

"(c) Promulgating, posting, and maintaining plant rules for its employees in retaliation for their protected union and/or concerted activities."

2. Substitute the following for paragraph 1(d).

"(d) Informing employees that other employees were laid off because they attempted to start a union."

3. Insert the following as paragraph 1(e) and re-letter the remaining paragraph.

"(e) Discriminating in regard to the tenure of employment of employees because of their protected concerted and union activities."

4. Substitute the attached notice for that of the administrative law judge.

**APPENDIX**

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT question employees about their union membership, activities, and sympathies and the union membership, activities, and sympathies of their coworkers.

WE WILL NOT threaten employees with the closure of our shop in the event that a union is selected as their collective-bargaining representative.

WE WILL NOT inform any employees that we laid off employees because they attempted to bring a union into the shop.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL NOT discriminate in regard to tenure of employment of employees because of their protected concerted and union activities.

WE WILL rescind the unlawful shop rules which we put into effect 18 December 1981.

WE WILL offer James Mills, Perry Williams, Ricky Bradley, Melvin Lowe, Charles Smith, and Ricky Tackett immediate and full reinstatement to

their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL compensate them for any loss of pay suffered by reason of their layoffs or discharges, less any net interim earnings, plus interest. WE WILL also compensate any employee for monetary losses suffered by virtue of our canceling their health and hospitalization insurance.

WE WILL notify each of them that we have removed from our files any reference to their discharge and that the discharge will not be used against them in any way.

#### UNITED HYDRAULIC SERVICES, INC.

### DECISION

#### STATEMENT OF THE CASE

BRUCE C. NASDOR, Administrative Law Judge. This case was tried at Logan, West Virginia, on October 26, 1982, and Charleston, West Virginia, on March 16, 1983. The pleadings allege violations of Section 8(a)(1), (3), and (4) of the National Labor Relations Act (the Act).

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the brief, I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all times material herein, Respondent, located in Micco, West Virginia, has been engaged in hydraulic work and in servicing and repairing machines for various coal mining companies. During the past 12 months, a representative period, Respondent in the course and conduct of its operations performed services valued in excess of \$50,000 for various customers outside the State of West Virginia, where Respondent is located.

Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

##### II. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent is engaged in the service and repair of hydraulic equipment which is employed at coal mines. Its work is totally related to the coal mining industry and generally not highly skilled. Paul H. Ballentine is Respondent's president and Phillip D. Ballentine is a co-owner with his brother Paul.

At the time the unfair labor practices are alleged to have been committed, Respondent operated two shifts with 12 employees, 6 employees on each shift. The Ballentine brothers supervised both shifts. Charles Smith, Melvin Lowe, Perry Williams, Ricky Bradley, Ricky Tackett, and James Mills worked on the first or day shift. On October 2, 1981,<sup>1</sup> Respondent's first shift em-

ployees took their break at the welding table inside the shop, and discussed a need for union representation because they felt that Paul Ballentine's attitude had changed. The consensus of opinion was that union representation should be sought, although Mills replied that he would have to talk to a union representative before deciding. The testimony reflects diversity with respect to whether Ricky Bradley, Paul Ballentine's stepson, who was living with Ballentine at the time, agreed that a union should be contacted, or whether Bradley did not want to get involved because it was his "family."

The next day, the employees were off. Paul Ballentine telephoned Tackett at home and asked him if he knew anything that was going on at the shop. Tackett replied negatively and Ballentine asked him if he was sure. Tackett further responded that he did not know anything going on at the shop and asked Ballentine why he was questioning him. Ballentine responded that he was just wondering. Later that day, Ballentine again telephoned Tackett at a service station and told him to "forget their earlier conversation."

On October 5, the beginning of a pay period, at the completion of their shift, Paul Ballentine advised Williams, Smith, Lowe, and Tackett that they were being laid off because of economic reasons. Mills had left early and was not so informed. No employees on the second shift were laid off. Bradley was not referred to in the testimony.

That same evening, Mills received a call from Paul Ballentine at his home. Ballentine told him that everyone had been laid off except for two individuals. Mills asked the reason for the layoff and Ballentine responded that it was due to economic reasons.

Mills then called Phillip Ballentine at home. He told Ballentine "it was pretty dirty about laying us off like that." Ballentine replied, "It's pretty dirty going [trying] to bring a union in here too." Mills replied that he had not "started it" and Ballentine asked who had started it, to which Mills stated that "it didn't make any difference." Ballentine replied, "It made a big difference." Mills then asked if the employees had been laid off because of the Union and Ballentine replied that the layoff was for economic reasons. Mills asked Ballentine when he would call him back to work and Ballentine stated he did not know. I have attempted to paraphrase the testimony of Mills who, in an effort to relate the entire conversation, may have sequentially confused questions and answers.

On the next day, October 6, George Spangler learned from his "wife's father-in-law" that Respondent had laid employees off. Spangler telephoned Paul Ballentine, inquiring about employment and Ballentine advised him to come in on the next day. On October 7, Spangler was hired to replace Lowe. Respondent avers that Spangler was hired in case Lowe did not want to return. There is no indication that Lowe ever advised Respondent that he would not, if recalled, return to work. Spangler worked for Respondent on October 7 and 8. On one of these days, he overheard Paul Ballentine discussing the recent layoff with his machinist. The discussion took place in the shop, and Spangler was in close proximity

<sup>1</sup> All dates are in 1981, unless otherwise specified.

because he was waiting for instructions for his next job. Ballentine inquired of the machinist as to whether the machinist was aware of how Ballentine knew who, and who not, to lay off. The machinist replied he did not know where Ballentine got his knowledge. Then looking at Spangler as if to bring him into the conversation, Ballentine made the statement, "If they're going to talk about a union or have a union in my shop," he would not stand for it, if he had to lay every one off. Then according to Spangler's testimony Ballentine addressed him asking, "What do you think of that?" and Spangler stated that he agreed with him. On October 8 at the end of the shift, Paul Ballentine came to Spangler, handed him his check, and stated that Lowe, the welder, was returning to work. Spangler inquired if there was anything else he could do in the shop and Ballentine replied negatively.

Lowe and Mills returned to work during the week ending October 9, the same week they were laid off, and worked approximately 20 hours for the balance of that week. They also worked overtime the following week. Bradley was hired during the week ending October 9, to paint Respondent's shop for a fee of \$250. Bradley was later recalled to work the next week and he also worked overtime. During the pay period ending October 16, Respondent hired Joe Neece to replace Tackett. During the week ending October 30, Shawn Calloway was hired to replace Williams. On the stand, Phillip Ballentine admitted that after he learned of the employees' interest in a union he spoke to Mills and probably all of the employees. He told them, "Before I let a union come in I'd close the doors." Ballentine continued, "The reason being because you can't hardly get men to work now without them trying to tell you what to do, you just have to pay it and everything else to get anything out of 'em [sic], and I just couldn't see no future in it." Ballentine acknowledged that his pretrial affidavit was accurate. It states, *inter alia*, "I did tell several employees shortly after the layoff, including James Mills and maybe another, that I would close down and go to work for someone else, before I would go broke over a union. I said there are so many shops in the area that people in this area are slack on their work because they can always go somewhere else and get a job if they are skilled. I don't have to be aggravated with a union."

Williams testified that, on October 8, he went to the shop to talk to Paul Ballentine about clearing up some money problems. According to Williams Ballentine took him into the shop and at that time proceeded to his office so he could make out Williams' check. Williams was talking to a machinist, Baisden. Williams testified that Ballentine was in the office with the doors open and that he, Williams, yelled in a loud voice to Baisden, because Baisden was running his machine. He wanted to be sure that Ballentine heard him state that he, Ballentine, had no reason to discharge all six men because Williams was the one "personally that started talking about the Union." The testimony of Williams in this regard is unrefuted. The next day Mills and Lowe were recalled to work.

On November 5, Williams filed unfair labor practice charges alleging that the layoff was unlawful. On November 24 and 27 Williams and Smith were recalled to

work. On December 4, Williams, Smith, and Fuller were laid off again, allegedly due to lack of work. Williams and Smith were recalled on December 10, and Fuller was recalled on December 11.

Paul Ballentine testified that he did not need Williams and Smith from the very beginning, but as a result of pressure from the Board agent he recalled them to work. Sometime before December 17, Paul Ballentine was advised by a Board agent that a complaint would issue with respect to the unfair labor practice charges filed by Williams. On December 17, Williams was laid off again, allegedly due to lack of work. On December 18, Respondent posted the work rules received in evidence as General Counsel's Exhibit 3.

Also on the same day, December 18, Williams and Respondent received copies of the unfair labor practice complaint. Williams went to the United Mine Workers headquarters and had copies made of the complaint.

On December 21, at approximately 9:30 a.m., Williams went to Respondent's facility to distribute copies of the complaint to Smith, Lowe, and Mills. At that time one of the Ballentine brothers met Williams beside Mills' worktable and asked Williams if he, had a copy for him. Williams responded negatively, that he would be getting his in the mail. Williams told Ballentine that the rules he had posted were unfair and "that he was trying to run the shop like a little Poland." Williams then left the premises.

On December 22, water began to drain from Paul Ballentine's property to the property immediately adjacent, which belonged to Williams. Williams, who became unnerved and frustrated over this state of affairs, went to Respondent's shop to confront Paul Ballentine. He angrily demanded that Ballentine do something about the water problem and Ballentine responded it was not his fault, and he would do nothing about it. Williams admittedly became angry, used some profanity, and threatened to have Ballentine's shop closed down. Williams then left Respondent's facility.

Paul Ballentine testified that he was advised by his attorney and the State Labor Board that he had every right to fire Williams. After being so advised, Ballentine telephoned Williams and told him that he was fired. Williams insisted that he was entitled to his paycheck immediately. Williams went to Respondent's facility and Ballentine gave him his paycheck. He asked Ballentine why he was being terminated. According to Williams, Ballentine led him to the bulletin board where the recently promulgated rules were posted, pointed to the rule<sup>2</sup> and said, "because of this ruling." Ballentine testified that initially Williams was laid off for economic reasons. As to the final termination he testified that the "main reason" was because Williams came into the shop and directed profanity towards him in the presence of other employees. He also testified that he told Williams his failure to obey the work rule was one other reason Williams was fired.

<sup>2</sup> See G.C. Exh. 3, "there is to be no employee in the shop except during his regular shift" or overtime without the permission of me [Paul Ballentine]."

Mills testified as a witness for the General Counsel, on October 26, 1982, the first day of the hearing. The purpose of his testimony was to support the allegations that he was unlawfully interrogated about his union activities and the union activities of his coworkers. Furthermore, his testimony established Respondent's knowledge of the union activities, and Respondent's union animus. The next day, October 27, 1982, Paul Ballentine went to his home and told him to return the keys to the shop, and turn in his uniform. He further advised Mills that his health insurance would be canceled. When Mills asked if he were being discharged, Ballentine responded negatively, that he was being laid off until further notice. Mills testified further that in the past when he had been laid off Respondent did not ask him to return the shop keys or his uniform, and that his insurance had never been canceled. The bulk of Mills' testimony remains unrefuted.

Ballentine testified that the reason he asked Mills to return the shop keys was because he no longer trusted him; he felt that Mills lied when testifying at the hearing. Another reason, although apparently not advanced as the reason for the discharge, but rather for Ballentine's loss of trust for Mills, was that Mills allegedly picked some green beans one summer without paying for them. Ballentine admitted that when an employee is laid off his insurance is not canceled until said employee has been laid off in excess of 30 days. He advanced no explanation as to why Mills' insurance was canceled approximately 5 days after he was laid off. Ballentine also testified that he had no plans to recall Mills. He testified that since Mills' layoff the work previously performed by him is now done by Phillip Ballentine. The record also reflects that other employees who were laid off subsequent to Mills have since been recalled for work which Respondent concedes Mills could have performed.

#### The Layoffs—Respondent's Defense

Respondent avers that the October 5, 1981 layoff was occasioned by economic reasons. Ron Vance, Respondent's certified public accountant, testified that in September Respondent contacted him with regard to assistance in obtaining a loan, because of a lack of cash flow. Early in his testimony on direct examination, Vance testified that he recommended to the Ballentine brothers that they should consider laying off some of the people because there was not enough money coming in. This occurred during a discussion in September 1981. Later in his testimony on cross-examination, Vance testified that he did not tell the Ballentines that they should lay off as soon as possible; rather, he told them he would recommend them reviewing the situation for a *possible* layoff.

Prior to the October 5 layoff, after the second week of September, Respondent increased the number of overtime hours its employees worked. Less than 2 days after laying employees off, Respondent hired replacements for them. Moreover, Respondent recalled several laid-off employees after they had been laid off for only a matter of several days. Documentary evidence and testimony reflect that the total number of overtime hours worked by Respondent's employees in October increased from that amount worked in the 2 previous months. The

record further reflects that Respondent's sales had been on the upsurge since June, and in October increased approximately 45 percent over the month of September.

With respect to the December 4 layoff, Respondent contends that there was a lack of work due to the general downturn in the coal industry. It is noted that Williams and Smith had been recalled on November 24, although Respondent contends that this was as a result of pressure by the Board agent, and they were not needed. Significantly, no employees were laid off in July although sales in November were greater. Moreover, employees worked overtime during the week in which Williams and Smith were laid off. Although Respondent contended that it did not need Williams or Smith, it is interesting to note that Williams worked 40 hours the same week he was laid off. Williams and Smith were recalled to work on December 10.

On December 17, Williams was the only individual laid off, allegedly due to lack of work. The evidence reflects that most of the employees worked the normal 40-hour workweek during the week Williams was laid off and several employees actually worked overtime. Some of the employees worked in some measure less than the 40-hour workweek.

#### Conclusions and Analysis

##### Independent 8(a)(1) Allegations

The record very clearly demonstrates that, in an October 5 telephone conversation, Phillip Ballentine coercively interrogated Mills. There was no effort on the part of Ballentine to deny said conversation. Ballentine then inferred that if Mills told him who instigated the Union it might favorably affect his layoff status. Accordingly, I find that Ballentine's conduct was in violation of Section 8(a)(1) of the Act.

Credible testimony establishes that Phillip Ballentine told employees that Respondent would close its doors before allowing a union in the shop. This was an unambiguous threat to close the facility if employees chose union representation and, as such, violates Section 8(a)(1) of the Act.

Spangler was particularly impressive as a witness. He responded from out of state, at the conclusion of his military basic training. He had no motive to fabricate his testimony. His testimony glaringly establishes that not only did Paul Ballentine reveal that he had specific knowledge with respect to the identity of the union adherents, but he also selected and effected employee layoffs on this basis. Moreover, during the same conversation, he threatened to lay off all employees before allowing a union in the shop. Therefore I discredit Ballentine and conclude that he engaged in conduct violative of Section 8(a)(1) of the Act.

##### The October 5 Layoff

As set forth earlier, Respondent's activities were inconsistent with a lack of cash flow and belie its representations. Overtime was significant, laid-off employees were replaced, and some laid-off employees were called back after only a few days. It is ominous that only union

adherents were laid off. Bradley, Paul Ballentine's stepson,<sup>3</sup> was hired to paint the shop thus mitigating the financial impact of his layoff. The record is replete with evidence of Respondent's union animus and overall hostility towards the union adherents. The timing and the abruptness of the layoff are highlighted by the fact that it occurred during the first day of a pay period.

Accordingly, based on the evidence I find and conclude that the layoff was in violation of Section 8(a)(1) and (3) of the Act.

#### The December 4 Layoff

By this time Respondent had woven a tapestry of interrogation, threats, and layoffs based on union activity. Williams and Smith were laid off on October 5, and not recalled until November 24 and 27. Then, on December 4, Respondent laid off Williams, Smith, and Fuller.

Respondent's "lack of work" defense is specious. Williams had just completed working a 40-hour week and, as set forth earlier, several employees worked overtime subsequent to the layoffs of Williams and Smith.

In my opinion, this type of conduct engaged in by Respondent is more insidious than a final permanent layoff. It encourages employees to vacate their principles and/or desires for union representation if they want to regain and retain their jobs. It graphically illustrates Respondent's intention and ability to control the destiny of the employees dependent on their union sentiments.

It is my judgment that the evidence heavily preponderates in favor of finding that Respondent violated Section 8(a)(1) and (3) of the Act by the December 4 layoff.

#### The December 17 Layoff

Williams was recalled to work on December 10, and he alone was laid off again on December 17. Respondent again raises a "lack of work" defense and this layoff was also summarily effectuated. I find this defense without merit and Respondent's conduct a further effort to break the Union and the spirit of the most active union adherent. It is also noted that, on October 8, Williams loudly proclaimed in the open shop, in the presence of Paul Ballentine, that he was the union instigator.

Other employees continued to work the better part of a 40-hour week after Williams' December 17 layoff, and some worked overtime. In my opinion Respondent's knowledge that the issuance of a complaint was imminent precipitated the layoff of Williams. I therefore find and conclude that it violated Section 8(a)(1) and (3) of the Act.

#### The Work Rules

Record evidence demonstrates that the rules were promulgated during a time when the employees were engaged in organizing efforts. Respondent did not present any legitimate business justification for the rules. There is no history that Respondent had ever before posted or enforced any written rules with respect to the conduct of its employees. Respondent allows that the rules were posted as a retaliatory measure for the Board's decision

to issue a complaint. The rules, inter alia, limit free access to the shop. I find and conclude that the rules are both overly restrictive and promulgated to retaliate against the employees and to frustrate their efforts to engage in union and/or protected concerted activities. Accordingly, by the promulgation and posting of these rules, Respondent has engaged in conduct in violation of Section 8(a)(1) and (3) of the Act.

#### The Termination of Williams on December 22

I have concluded that Respondent's work rules were unlawfully promulgated. One of Respondent's multiple reasons for discharging Williams was because he violated one of the rules by entering the shop without permission. Prior to this rule, employees were allowed entrance even when off duty. I have found that the rule was retaliatory in nature, therefore as a basis for discharge, Section 8(a)(1) and (3) of the Act are violated. Moreover, Respondent contends that Williams' use of profanity, never a sensitive area in the past or the basis for termination, and his threat to close the shop, formed the basis for discharge. Respondent did not communicate to Williams at the time that these were the reasons for his discharge. Furthermore, in his pretrial affidavit, Ballentine referred only to Williams' appearance in the shop of December 21, when he distributed copies of the Board's complaint, and criticized the new rules, as the bases for the discharge. Williams' conduct on December 27 was clearly concerted and protected.

Considering Respondent's treatment of Williams, specifically, the constant layoffs and the cavalier reception accorded him when he complained about the water draining onto his property, Williams' emotional reaction was to be expected. I point out that Williams did not have any history of overreacting, nor does the record reflect that he was a problem employee.

I therefore find that Respondent's discharge of Williams was pretextual and Respondent would not have terminated Williams but for his union and protected concerted activity. Accordingly, I conclude that, by the discharge of Williams, Respondent engaged in violations of Section 8(a)(1) and (3) of the Act.

#### The October 27, 1982 Termination of Mills

Mills was discharged on October 27, 1982, the very next day after he testified at the unfair labor practice hearing herein. Paul Ballentine conceded his hostility towards Mills, stating that Mills had lied in his testimony, had stolen some green beans, and therefore he could no longer trust him.

Although Respondent avers that Mills was laid off, the record is clear that Respondent has no plans to call him back to work and indeed Mills has not worked for Respondent since October 22, 1982. Furthermore, the work that Mills had previously performed was being performed by Phillip Ballentine.

Respondent's previous practice was to allow employees to maintain their insurance coverage for 30 days after being laid off, whereas in the case of Mills his insurance was canceled approximately 5 days after his layoff.

<sup>3</sup> Bradley lived with his stepfather.

Based on the preponderance of the evidence I find and conclude that Mills was discharged for filing charges and testifying before the Board, in violation of Section 8(a)(1), (3), and (4) of the Act. His union activity served as another basis for his termination.

#### CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By interrogating employees about their union activities and the union activities of their coworkers, Respondent has committed unfair labor practices in violation of Section 8(a)(1) of the Act.

3. By threatening employees that it would close its facility if they engaged in union activities, Respondent violated Section 8(a)(1) of the Act.

4. By informing a perspective employee that other employees were laid off because they attempted to bring the Union into the shop, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.

5. By promulgating and posting restricted plant rules for its employees in retaliation for their union and protected concerted activities, Respondent violated Section 8(a)(1) and (3) of the Act.

6. By discriminating in regard to the tenure of employment of Bradley, Lowe, Mills, Smith, Tackett, and Williams because of their concerted and union activities, Respondent has violated Section 8(a)(1), (3), and (4) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1), (3), and (4) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that Respondent be ordered to offer the employees who were laid off—Bradley, Lowe, Mills, Smith, Tackett, and Williams—immediate and full reinstatement to their former or a substantially equivalent positions if they have not already been reinstated, without prejudice to their seniority or other rights and privileges. Mills and Williams, who were discharged later, shall also be offered full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges. In addition, Respondent shall make all of these employees whole for any losses they may have suffered by reason of the discrimination against them, by payment to them of a sum of money equal to that which they would normally have earned from the date of their layoffs or discharges, less net earnings during said period. Backpay shall be computed according to *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977). (See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).)

I further recommend that Respondent be required to rescind the rules it unlawfully promulgated, posted, and maintained on December 18, 1981, and that Respondent

be ordered to reinstate employees' health and hospitalization insurance and make any employee whole who has suffered as a result of having his insurance canceled.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>4</sup>

#### ORDER

The Respondent, United Hydraulic Services, Inc., Nico, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees regarding their union membership, activities, and sympathies and the union membership, activities, or sympathies of their coworkers.

(b) Threatening employees that it would close its facility should the employees select a union as their collective-bargaining representative.

(c) Promulgating, posting, and maintaining restrictive plant rules for its employees in retaliation for their protected union and/or concerted activities.

(d) Informing job applicants that employees were laid off because they attempted to start a union.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Perry Williams and James O. Mills immediate and full reinstatement to their former positions or, if such positions no longer exist, to positions which are substantially equivalent, without prejudice to any seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them with interest as provided in the section above entitled "The Remedy."

(b) Offer the laid-off employees Bradley, Lowe, Smith, Tackett, Williams, and Mills, for the periods they were laid off, immediate and full reinstatement if they have not already been reinstated to their former positions or, if such positions no longer exist, to positions which are substantially equivalent, without prejudice to any seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them with interest as provided in the section above entitled "The Remedy."

(c) Reinstatement employees' health and hospitalization insurance and make any employees whole who suffered monetary losses as a result of their insurance being canceled.

(d) Rescind the rules it unlawfully promulgated, posted, and maintained on December 18, 1981.

(e) Respondent shall expunge from its files any references to the discharges or layoffs of the employees named in the amended consolidated complaints and re-

<sup>4</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ferred to above, and notify them in writing that this has been done, and that evidence of their unlawful layoffs or discharges shall not be used as a basis for future personnel actions against them.

(f) Post at its facility copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately

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<sup>5</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.